

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States District Court
Southern District of Texas
FILED

TOMMY BRANTON, ET AL

§
§
§
§
§
§

OCT 19 1999

VS.

Michael N. Milby, Clerk

CITGO PETROLEUM CORPORATION,
ET AL

CASE NO. C-98-585

**MOTION TO QUASH SUBPOENA, MOTION FOR PROTECTIVE ORDER
AND REQUEST FOR HEARING**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MARCO KALTOFEN, filing this Motion to Quash and Motion for Protective Order, and in support thereof would show unto the Court the following:

1. The undersigned, conferred with counsel for Citgo and an agreement was reached to cancel the deposition as noticed pending a ruling by this Court on this Motion to Quash. The undersigned agreed to cooperate with counsel for Citgo in the rescheduling of the witnesses deposition should this Motion to Quash be denied.

2. This case arises from an explosion and fire at the Citgo refinery in Corpus Christi, Texas, on May 12, 1997. Four related cases are currently pending in this Court: *Humberto Barrera, et al. vs. Citgo Petroleum Corporation*, Civil Action No. C-99-229; *Charles Henry Cavada, et al., vs. Citgo Petroleum Corporation, et al.*, Civil Action No. C-99-227; *Seledonio Vela, et al. vs. Citgo Petroleum Corporation*, Civil Action No. C-99-254; and *Angel Abrego, et al vs. Citgo Petroleum Corporation, et al.*, Civil Action No. 99-2593-F. These cases arise from the same incident and involve some of the same defendants as the above-styled case, but were brought by different plaintiffs who are represented by different attorneys.

3. The Plaintiffs in the four cases described above have retained Movant Kaltofen to collect data and provide opinions. Movant Kaltofen has not been designated a testifying expert in any of the four cases. The Plaintiffs in those cases and Movant Kaltofen have invested substantial time and resources in collecting data and performing tests in anticipation of litigation. Movant Kaltofen has not been retained as an expert by any party in the *Branton* case.

4. The Defendants in the *Branton* case have issued a subpoena ordering Movant Kaltofen to appear for a deposition on October 25, 1999 in Natick, Massachusetts. In addition, the subpoena orders him to produce certain documents and materials for inspection. A copy of the subpoena and the description of documents and materials to be produced are attached hereto as Exhibit "A".

5. This Court should quash the subpoena and issue a protective order prohibiting the Defendants from taking Movant Kaltofen's deposition in the future. Movant Kaltofen has not been retained by any party in the *Branton* case, and his data and opinions are not essential to the conclusions of any expert who has been retained in that case. In sum, it is apparent that the Defendants have subpoenaed Movant Kaltofen not because of a legitimate need for his testimony in the *Branton* case, but rather in an improper effort to circumvent the rules regarding expert discovery in the related cases described above.

6. Federal Rule of Civil Procedure 45(c)(3)(B)(ii) provides that a Court may quash or modify a subpoena which "requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party." Because Defendants' subpoena would require disclosure of information and data resulting from work which was not requested by any party in the *Branton*

case, it is in direct violation of this rule. The rule permits a party to proceed with such a deposition only if the party demonstrates “a substantial need for the testimony or material that can not be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.” The Defendants in the *Branton* case have no substantial need for Mr. Kaltofen’s testimony or data. The Court should therefore quash the subpoena and issue a protective order.

7. In the alternative, FRCP 45(c)(3)(A) provides that the Court “shall quash or modify” a subpoena if it “fails to allow reasonable time for compliance,” or if it “subjects a person to undue burden.” Defendants’ subpoena should be quashed because it does not allow a reasonable time for compliance, and it subjects Mr. Kaltofen to undue burden. Mr. Kaltofen has been retained as an expert in *Achee, et al v.s.. Port Drum Company, et al*, Civil Action No. 1:98-CV-001554, pending in the United States District Court, Eastern District of Texas, Beaumont Division. In that case, Mr. Kaltofen is required to present a report describing his opinions and the basis for them no later than October 29, 1999. See Affidavit of John M. Quinlan, attached as Exhibit “B”; agreed scheduling order in *Achee, et al vs. Port Drum Company, et al*, attached as Exhibit “C”. Requiring Mr. Kaltofen to complete his report in the *Achee* case while simultaneously preparing for his deposition in the *Branton* case would impose an undue burden on him. This Court should therefore quash Defendants’ subpoena and issue a protective order prohibiting the Defendants from taking his deposition until Mr. Kaltofen has completed his report in the *Achee* case and been given a reasonable time to prepare for his deposition in the *Branton* case.

8. Movant Kaltofen respectfully requests a hearing on this matter at the Court's next available opportunity.

WHEREFORE, PREMISES CONSIDERED, Movant Kaltofen respectfully request that this Court quash the subpoena and issue a protective order prohibiting Defendants from deposing him in connection with the *Branton* case.

Respectfully submitted,

HUERTA, HASTINGS & ALLISON

924 Leopard Street

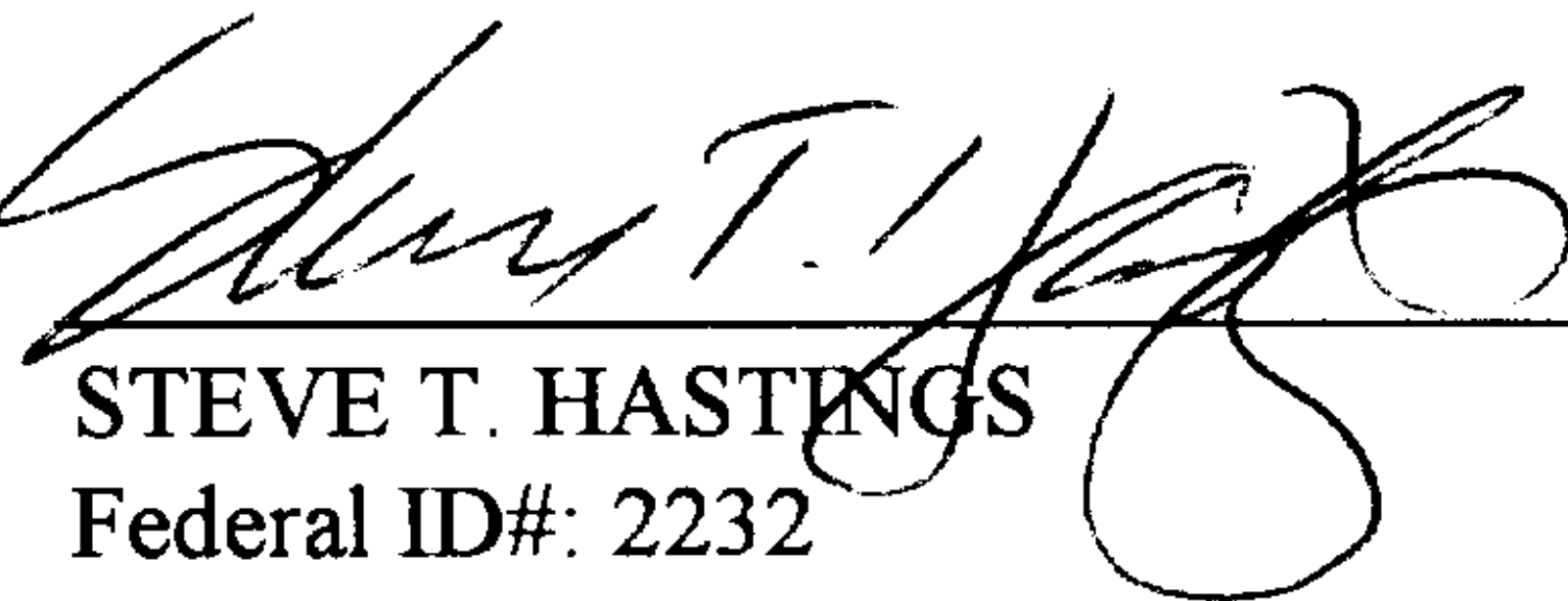
P. O. Box 23080

Corpus Christi, Texas 78403-3080

Telephone: (361) 884-1632

Facsimile: (361) 884-7013

By:

A handwritten signature in black ink, appearing to read "Steve T. Hastings", is written over a horizontal line. The signature is stylized with a large, looping flourish at the end.

STEVE T. HASTINGS

Federal ID#: 2232

State Bar No. 09211000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the below listed counsel by the indicated means on this 17th day of October, 1999.

Cheryl A. Falvay, Esq.
AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
1333 New Hampshire Avenue, N.W., Suite 400
Washington, D.C. 20036

Seth Cortigene
The Corgingene Law Firm
3730 Kirby Drive, Suite 1140
Houston, Texas 77098

Jeffrey Stern
Stern & Miller
5821 Southwest Freeway, Suite 501
Houston, Texas 77057

Jeffrey Sherwood
Akin, Gump, Strauss, Hauer & Feld, LLP
13333 New Hampshire Avenue, N.W., Ste. 400
Washington, D.C. 20036

Ralph Meyer
Royston, Rayzor, et al.
170 Wilson Plaza West
606 N. Carncahua
Corpus Christi, Tx. 78476-1702


STEVE T. HASTINGS

A

SENT BY:

15-99 ; 4:06PM ;

PIP NATI

882 4829;# 1

Issued by the
United States District Court

FOR THE DISTRICT OF MASSACHUSETTS

TOMMY BRANTON, *et al.*,

Plaintiffs,

vs.

CITGO PETROLEUM CORPORATION, *et al.*,

Defendants.

SUBPOENA IN A CIVIL CASE**DATE OF SERVICE**

10-15-99

To: **MARCO KALTOFEN**
5 Water Street
Natick, MA 01766

Case No. **C-98-585**
 (Pending in the United States District Court
 for the Southern District of Texas, Corpus
 Christi Division)

- ☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Crowne Plaza Hotel
 1360 Worcester Road
 Natick, MA 01760

DATE AND TIME

October 25, 1999
 10:00 a.m.

- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See Attachment A**

PLACE

Crowne Plaza Hotel
 1360 Worcester Road
 Natick, MA 01760

DATE AND TIME

October 25, 1999
 10:00 a.m.

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ISSUING OFFICER'S SIGNATURE AND TITLE (indicate if attorney for Plaintiff or Defendant)
Cheryl A. Falvey
 Attorney for Defendants

DATE

October 14, 1999

882 4829;# 1

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Cheryl A. Falvey, Esq.
 AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
 1333 New Hampshire Avenue, N.W., Suite 400
 Washington, D.C. 20038
 (202) 887-4000

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

SUBPOENA IN A CIVIL CASE**DATE OF SERVICE**

10-15-99

SENT BY:

10-15-99 ; 4:07PM ;

PIP NATION

882 48291# 2

ATTACHMENT A**Definitions**

As used below, the following words and phrases shall have the following meanings:

1. The term "document" means any writing or record of any type or description including, but not limited to, test results, proposals, analysis, financial data, summaries of or notes concerning oral representations, correspondence, letters, labels, statements, envelopes, contracts, bulletins, circulars, pamphlets, telephone message slips, telephone logs, telephone bills, business plans, agreements, agendas, minutes, memoranda, telegrams, telexes, cables, messages, notes, work sheets, reports, blueprints, maps, diagrams, specifications, schematic drawings, forms, studies, photographs, videotape, film, checkbook logs, cancelled checks, inter-office communications, intra-office communications, appointment books, appointment logs, calendars, pocket calendars, diaries, expense reports, drafts, wire transfer transmittal authorizations and confirmations, bank statements, ledgers, journals, work orders, logs, purchase orders, bills of lading, letters of credit, invoices, confirmations, receipts, travel vouchers, promotional materials, lists, notebooks, computer print-outs, electronically or magnetically recorded or stored data (including word processor and computer disks or tapes), microfilm, microfiche, tape recordings, transcripts, digests, affidavits, opinions, signed statements of witness(es), summaries, notices, books, articles, newspapers, charts, magazines, and all other documentary material including non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto or otherwise), and drafts, whether used or not.
2. The term "relating to" means to refer to, discuss, evidence, involve, reflect, deal with, consist of, emanate from, be directed at, or in any way pertain, in whole or in part, to the subject matter of the document request.

Documents to Be Produced In Connection with Subpoena of Marco Kaltfen

1. Any and all Documents and other materials relating to the May 12, 1997 fire and explosion at CITGO's refinery in Corpus Christi, Texas.
2. Any and all Documents and other materials relating to the results of any soil, air, or water test, inspection, measurement, investigation, or examination, including testing conducted on any plant, animal, or inanimate object, relating to alleged chemical releases from CITGO's refinery in Corpus Christi, Texas.

10-15-99 ; 4:07PM ;

PIP NATION

882 48291# 2

ATTACHMENT A

Definitions

As used below, the following words and phrases shall have the following meanings:

1. The term "document" means any writing or record of any type or description including, but not limited to, test results, proposals, analysis, financial data, summaries of or notes concerning oral representations, correspondence, letters, labels, statements, envelopes, contracts, bulletins, circulars, pamphlets, telephone message slips, telephone logs, telephone bills, business plans, agreements, agendas, minutes, memoranda, telegrams, telexes, cables, messages, notes, work sheets, reports, blueprints, maps, diagrams, specifications, schematic drawings, forms, studies, photographs, videotape, film, checkbook logs, cancelled checks, inter-office communications, intra-office communications, appointment books, appointment logs, calendars, pocket calendars, diaries, expense reports, drafts, wire transfer transmittal authorizations and confirmations, bank statements, ledgers, journals, work orders, logs, purchase orders, bills of lading, letters of credit, invoices, confirmations, receipts, travel vouchers, promotional materials, lists, notebooks, computer print-outs, electronically or magnetically recorded or stored data (including word processor and computer disks or tapes), microfilm, microfiche, tape recordings, transcripts, digests, affidavits, opinions, signed statements of witness(es), summaries, notices, books, articles, newspapers, charts, magazines, and all other documentary material including non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto or otherwise), and drafts, whether used or not.
2. The term "relating to" means to refer to, discuss, evidence, involve, reflect, deal with, consist of, emanate from, be directed at, or in any way pertain, in whole or in part, to the subject matter of the document request.

AFFIDAVIT OF JOHN M. QUINLAN

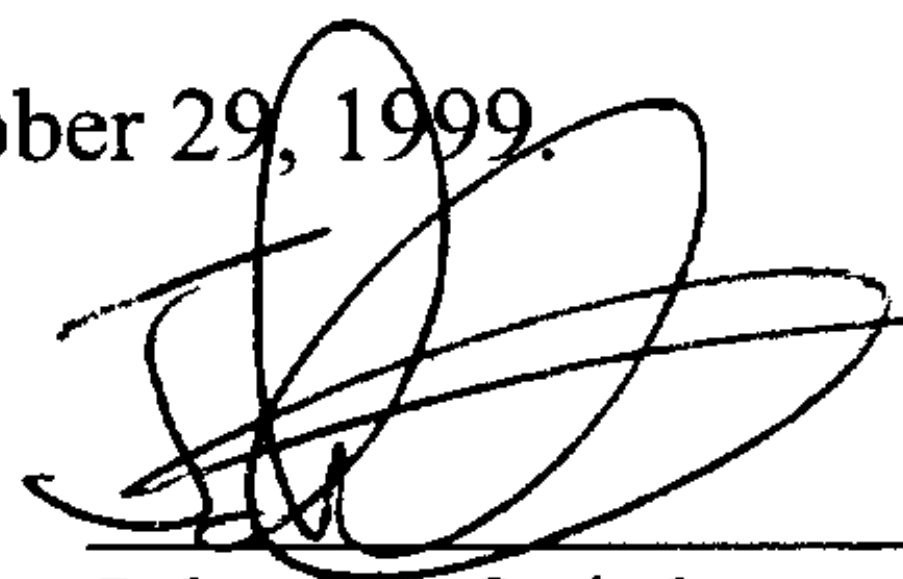
STATE OF TEXAS §
 §
COUNTY OF NUECES §

Before me, the undersigned authority, personally appeared John M. Quinlan known to me to be a credible person, whose name is subscribed to the foregoing instrument and having been duly sworn by me, deposed and said:

“My name is John M. Quinlan. I am over the age of 21 and competent to make this affidavit. I am one of plaintiffs lawyers in *Rudy Achee, et al. v. Port Drum Company, et al.*; 1:98-CV-01554, United States District Court, Eastern District of Texas, Beaumont Division.

The Agreed Scheduling Order attached hereto is a true and correct copy of the order entered in said civil action. The deadline of October 15, 1999 for plaintiffs to identify by a report listing the qualifications of each expert, each opinion the expert will present, and the basis for it, has been extended until October 29, 1999.

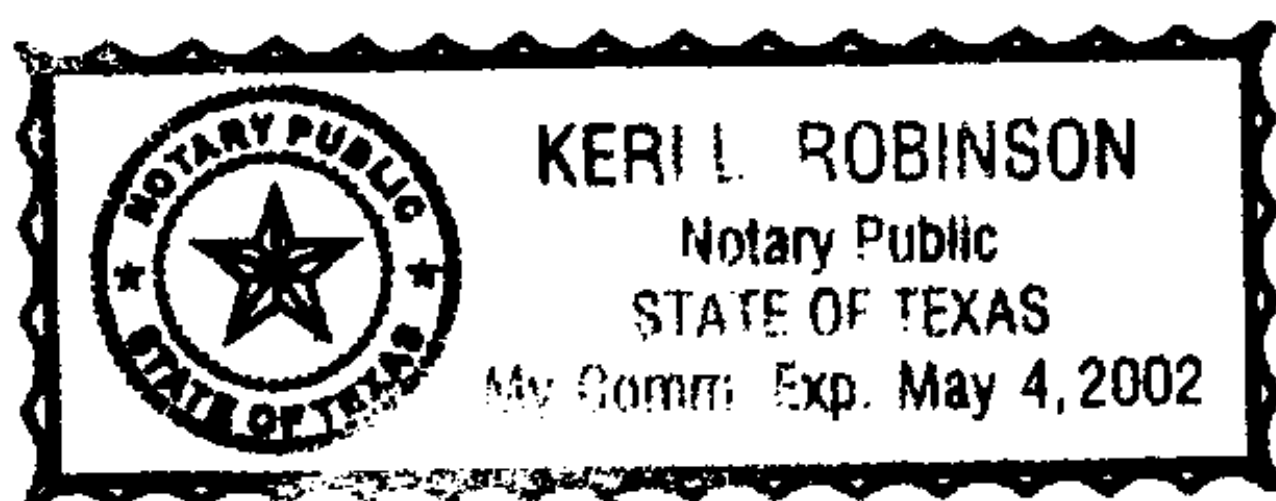
Marco Kaltofen is employed as an expert in this case which involves over 1,500 plaintiffs. He has taken extensive samples in the area near the subject Port Drum facility. This work has been extensive, and the other experts in the case will rely upon his data and opinions in forming their own opinions. His work cannot be performed by anyone else, and, if he does not complete it, the defendants will likely move for a dismissal or motion for summary judgment based upon plaintiffs’ failure to produce expert reports. He is currently working to complete an expert report in this case which is due October 29, 1999.



John M. Quinlan

SWORN TO and SUBSCRIBED before me by John M. Quinlan on this 19th day of October, 1999, to certify which witness my hand and seal of office.

Keri L. Robinson
NOTARY PUBLIC, State of Texas



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FILED-AUG 27 1999
U.S. DISTRICT COURT
BY:IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS 99 AUG 24 PM 2:38
BEAUMONT DIVISION TX EASTERN-BEAUMONTRUDY ACHEE, et al.
Plaintiffs,

vs.

PORT DRUM COMPANY, et al.
Defendants.§
§
§
§
§
§
§BY James C. LaneCivil Action No. 1:98-CV-001554
JURY**AGREED SCHEDULING ORDER**

The disposition of this case will be controlled by the following schedule and deadlines:

1. EXPERT WITNESSES for the PLAINTIFF will be identified by a report listing the qualifications of each expert, each opinion the expert will present, and the basis for it.
Due Date: Oct. 15, 1999
2. EXPERT WITNESSES for the DEFENDANT will be identified by a report listing the qualifications of each expert, each opinion the expert will present, and the basis for it.
Due Date: Jan. 15, 2000
3. Defendants designate trial plaintiffs: Dec. 1, 1999
4. DISPOSITIVE MOTIONS will be filed by: Feb. 7, 2000
5. DISCOVERY must be completed by: Feb. 25, 2000
Written discovery requests are not timely if they are filed so close to this deadline that the recipient would not be required under the Federal Rules of Civil Procedure to respond until after the deadline.
6. JOINT PRETRIAL ORDER will be filed by: _____
Plaintiff is responsible for timely filing the complete Joint Pretrial Order to include Voir Dire and Jury Issues.
7. DOCKET CALL is set for: _____
The Court will set this date. At 4:00 p.m.
8. Trial date: March 10, 2000
(The Court will provide this date)

No instrument filed within 7 days before the Docket Call will be considered at Docket Call.

8-24-99

Date _____

John D. Tinner

JUDGE PRESIDING

APPROVAL REQUESTED:

PLAINTIFFS' COUNSEL:

DEFENSE COUNSEL:

Robert C. Hilliard
Hilliard & Munoz, P.L.L.C.

Arthur R. Almquist
Mehaffy & Weber

Russell W. Heald
Hilliard & Heald, L.L.P.

John Eldridge* JAB
John Eldridge
Rudy England
Haynes & Boone

Samuel Stubbs
David W. Corban
Fulbright & Jaworski

Richard O. Faulk
José A. Berlanga
Gardere Wynne Sewell & Riggs, L.L.P.

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MEHAFFY & WEBER

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No instrument filed within 7 days before the Docket Call will be considered at Docket Call.

Date

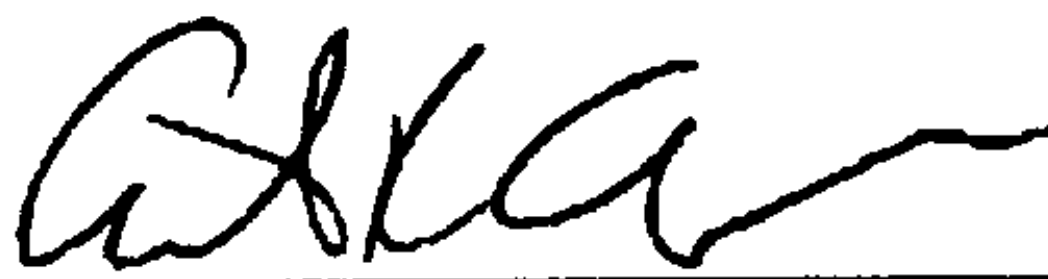
JUDGE PRESIDING

APPROVAL REQUESTED:

PLAINTIFFS' COUNSEL:

DEFENSE COUNSEL:

Robert C. Hilliard
Hilliard & Munoz, P.L.L.C.


Arthur R. Almquist
Mohaffy & Weber

Russell W. Heald
Hilliard & Heald, L.L.P.

John Eldridge
Rudy England
Haynes & Boone

Samuel Stubbs
David W. Corban
Fulbright & Jaworski

Richard O. Faulk
José A. Berlanga
Gardere Wynne Sewell & Riggs, L.L.P.

10:13A Hilliard & Munoz

512-8 22471

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GARDERE WYNNE SEWELL & RIGGS, L. L. P.

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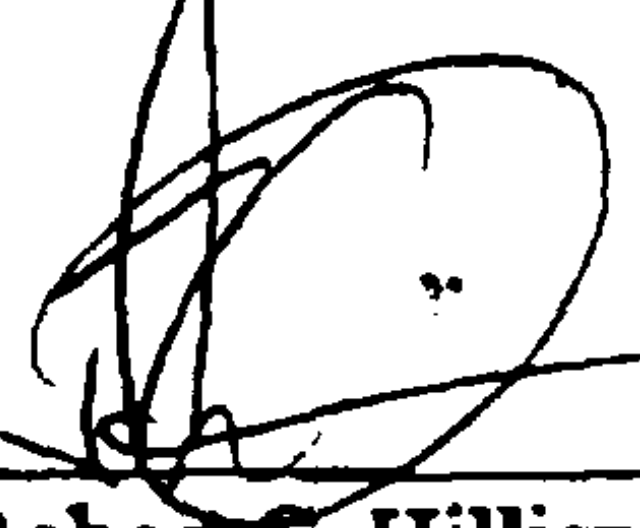
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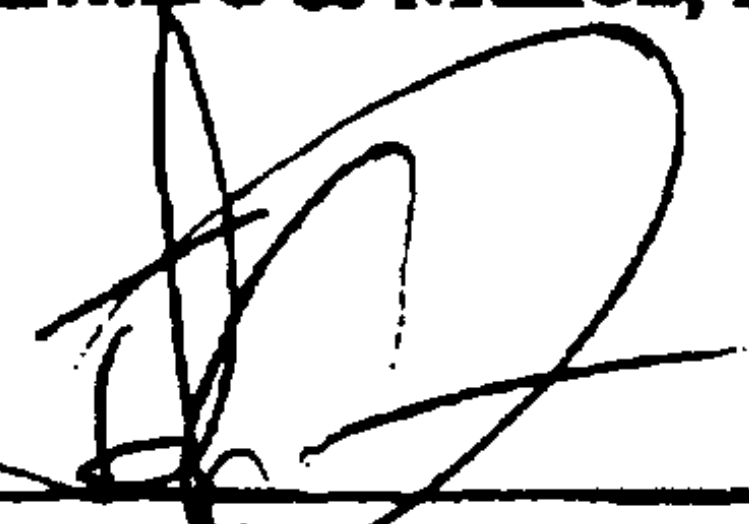
Date

JUDGE PRESIDING

APPROVAL REQUESTED:

PLAINTIFFS' COUNSEL:

 by permission
Robert C. Hilliard
Hilliard & Munoz, P.L.L.C.

 by permission
Russell W. Heald
Hilliard & Heald, L.L.P.

DEFENSE COUNSEL:

Arthur R. Almquist
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Richard O. Faulk
José A. Berlanga
Gardere Wynne Sewell & Riggs, L.L.P.

11:58

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FROM GARDERE WYNNE SEWELL & RIGGS, L. L. P.

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 Date

 JUDGE PRESIDING

APPROVAL REQUESTED:

PLAINTIFFS' COUNSEL:

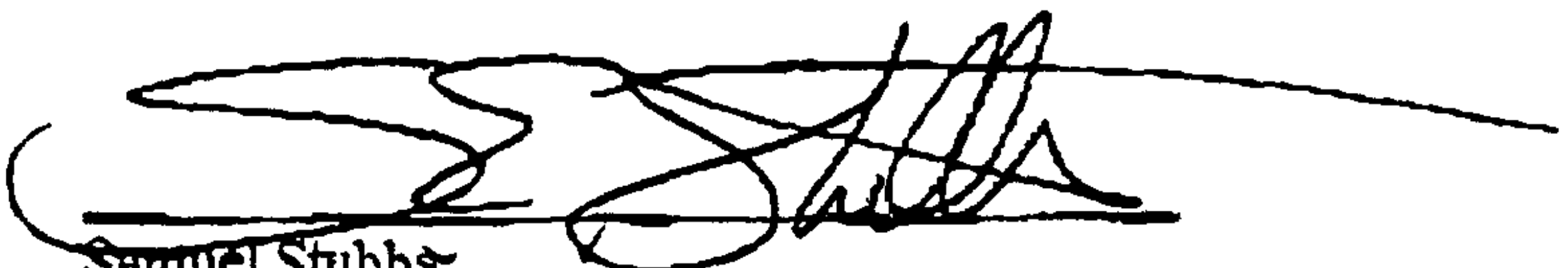
DEFENSE COUNSEL:

 Robert C. Hilliard
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 Arthur R. Almqvist
 Mehaffy & Weber

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 Hilliard & Heald, L.L.P.

 John Eldridge
 Rudy England
 Haynes & Boone



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 José A. Berlanga
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RECEIVED

FILED AUG 27 1999
U.S. DISTRICT COURT
BY:

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS 99 AUG 24 PM 2:38

BEAUMONT DIVISION

TX EASTERN-BEAUMONT

BY James C. LaneRUDY ACHEE, et al.
Plaintiffs,§
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vs.

Civil Action No. 1:98-CV-001554
JURYPORT DRUM COMPANY, et al.
Defendants.**AGREED SCHEDULING ORDER**

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Plaintiff is responsible for timely filing the complete Joint Pretrial Order to include Voir Dire and Jury Issues.
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The Court will set this date. At 4:00 p.m.
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PLAINTIFFS' COUNSEL:

DEFENSE COUNSEL:

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Mehaffy & Weber

Russell W. Heald
Hilliard & Heald, L.L.P.

John Eldridge * jAB
John Eldridge By permission
Rudy England
Haynes & Boone

Samuel Stubbs
David W. Corban
Fulbright & Jaworski


Richard O. Faulk
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Gardere Wynne Sewell & Riggs, L.L.P.

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10:13A Hilliard & Munoz

512-88 471

P.03

GARDERE WYNNE SEWELL & RIGGS, L. L. P.

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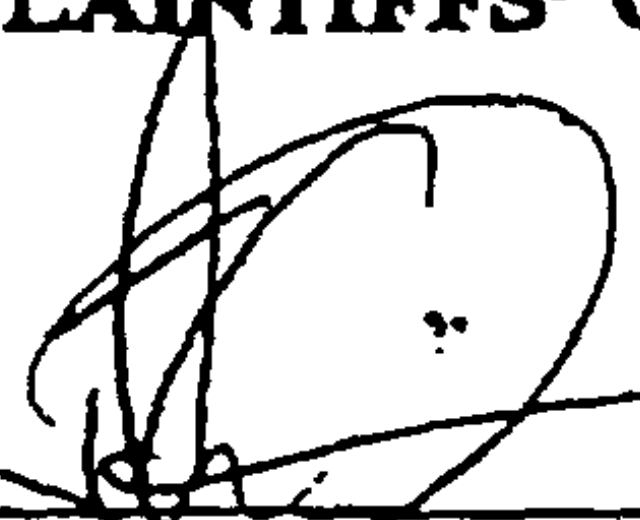
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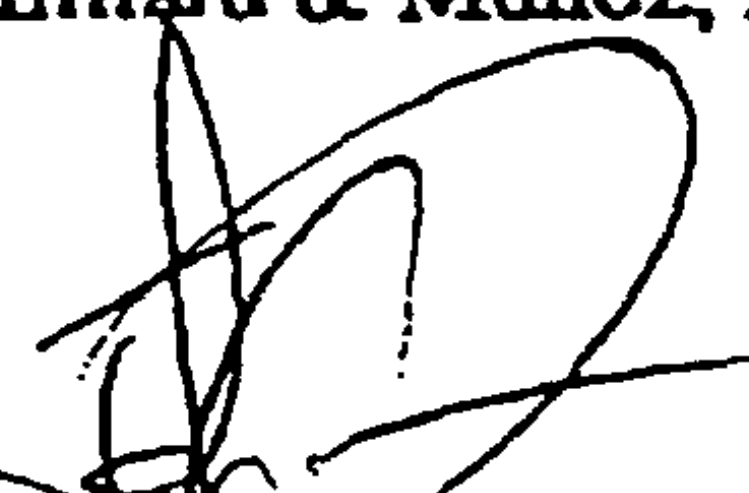
Date

JUDGE PRESIDING

APPROVAL REQUESTED:

PLAINTIFFS' COUNSEL:

 by permission
Robert C. Hilliard
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 by permission
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Hilliard & Heald, L.L.P.

DEFENSE COUNSEL:

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Mehaffy & Weber

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11:58

FULBRIGHT → 02411963478713276555

NO. 533

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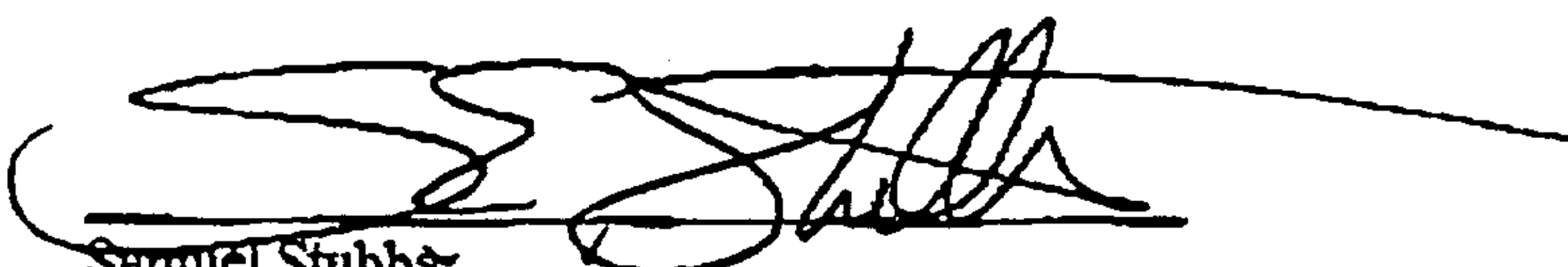
DEFENSE COUNSEL:

Robert C. Hilliard
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TOMMY BRANTON, ET AL

VS.

CITGO PETROLEUM CORPORATION,
ET AL

§
§
§
§
§
§

CASE NO. C-98-585

ORDER

On this date the Court considered the Motion to Quash Subpoena, Motion for Protective Order and Request for Hearing. After considering the motion the Court:

GRANTS the Motion to Quash Subpoena, and GRANTS the Motion for Protective Order.

It is, therefore, ORDERED, ADJUDGED and DECREED that the above motion, and it hereby is, GRANTED.

SIGNED and ENTERED this _____ day of _____, 1999.

United States District Judge